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Copyright Royalty Board

37 CFR Part 383

[Docket No. 19-CRB-0006-NSR (2021-2025) (NSS IV)]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish a final rule governing the rates and terms for the digital performances of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: Effective date: January 1, 2021.

ADDRESSES: Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 19-CRB-0006-NSR (2021-2025).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707-0078 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2019, the Copyright Royalty Judges published a proposed rule governing the rates and terms for the digital performances of sound recordings by new subscription services that provide transmissions to residential subscribers as part of a cable or satellite television bundle and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025. 84 FR 60356. The rates and terms in the proposed rule were the subject of a settlement between SoundExchange, Inc., and Sirius XM Inc. Joint Motion to Adopt Settlement, Docket No. 19-CRB-0006-NSR (2021-2025) (“NSS IV”). The Judges received no comments on the proposed rule.

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 17 U.S.C. 801(b)(7)(A)(ii). Because no NSS IV participant has objected to the settlement, and the Judges find no basis in the record to conclude that the settlement does not provide a reasonable basis for setting statutory terms and rates, the Judges adopt the terms and rates as proposed.

List of Subjects in 37 CFR Part 383

Copyright, Sound recordings, Webcasters.

Final regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 383 as follows:

**PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS
AND THE REPRODUCTION OF EMPHEMERAL RECORDINGS BY CERTAIN
NEW SUBSCRIPTION SERVICES**

1. The authority citation for part 383 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 [Amended]

2. In § 383.1, amend paragraph (a), by removing “2016” and adding in its place, “2021”, and by removing “2020” and adding in its place, “2025”.

§ 383.2 [Amended]

3. In § 383.2, amend paragraph (c), by removing “2016” and adding in its place, “2021”, and by removing “2020” and adding in its place, “2025”.

4. Amend § 383.3 by:

- a. In paragraph (a), removing the words “statutory licenses” and adding, in their place, the word “License”;
- b. Revising paragraphs (a)(1)(i) through (v);
- c. Revising paragraph (a)(2)(i) through (v); and
- d. Revising paragraph (c).

The revisions read as follows:

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a)***

(1)***

(i) 2021: \$0.0208

(ii) 2022: \$0.0214

(iii) 2023: \$0.0221

(iv) 2024: \$0.0227

(v) 2025: \$0.0234

(2)***

(i) 2021: \$0.0346

(ii) 2022: \$0.0356

(iii) 2023: \$0.0367

(iv) 2024: \$0.0378

(v) 2025: \$0.0390

(c) *Allocation between ephemeral recordings fees and performance royalty fees.* The Collective must credit 5% of all royalty payments as royalty payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions through a Service are included in the 5%.

§ 383.4 [Amended]

5. In § 383.4 amend paragraph (a) by:

- a. Removing the words “subscription transmissions” and adding, in their place, the words “Digital audio transmission”;
- b. Removing the words “preexisting satellite digital audio radio services” and adding, in their place, the words “Commercial Webcasters”;

- c. Removing the words “part 382, subpart B” and adding, in their place, the words “part 380, subpart A”;
- d. Removing the years “2013-2017” and adding, in their place, the years “2021-2025”;
- e. Removing the words “For purposes of this section” and adding, in their place, the words “For purposes of this part”.

Dated: January 21, 2020.

Jesse M. Feder,
Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,
Librarian of Congress.

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